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him a life estate therein without the power to sell or dispose of it." William executed a deed to the defendant purporting to convey the fee and subsequently brought this action to set aside the deed, *Held*, that the deed so far as it affected the title but without impairing the covenants be set aside. *Albin* v. *Parmele* (1904), — Neb. —, 98 N. W. Rep. 29.

It is the universal holding both in England and in this country where the rule in Shelley's case has not been abolished by statute that the use of the word "heirs" in a testament will defeat the emphatically expressed intent of the testator and convert that which the testator intended as a life estate into an estate in fee. *Traverse* v. *Wallace*, 93 Md. 507, *VanGrutten* v. *Foxwell* [1897], A. C. 658, *Carpenter* v. *Van Olinger*, 127 Ill. 42, *Teal* v. *Richardson* (1903), 66 N. E. Rep. 435. But the court in the principal case citing a Nebraska statute to the effect that all instruments creating or conveying any interest in real estate must be construed according to the true intent of the parties "so far as such intent is consistent with the rules of law," said that "the force of the statute is such that the employment of the tabooed word need not bereave either the language of the instrument or the court construing it of plain and ordinary common sense." Inasmuch as the rule in Shelley's case is an absolute rule of law (TIFFANY THE MODERN LAW OF REAL PROPERTY p. 308), and the Nebraska statute expressly requires the intent to be consistent with rules of law, it would seem that the court in this case arbitrarily abolished the rule in Shelley's case.

SPECIFIC PERFORMACE—PAROL CONTRACT—PART PERFORMANCE.—Mrs. Bays, one of the defendants in this suit, was an old lady living in the state of Virginia. She wrote to the plaintiff, her nephew, who was then living in Missouri and proposed to buy a farm for his benefit on which they were to live together. In this letter she said, "When I am done with the farm, will give it to you." The plaintiff alleges that in reliance upon this promise he gave up his position in Missouri, came to Virginia and made improvements on the farm, built a fence, planted grass seed and took a wife. That he took this wife in order to enable him the better to perform his contract. He says he is ready and willing to perform and asks specific performance from the defendant. *Held*, that the clause, "When I am done with the farm," is too indefinite and uncertain to support a decree for specific performance, and that building a fence and planting grass seed are in the ordinary course of husbandry and are not such improvements as would take an oral contract out of the statute of frauds. The court doesn't say whether taking a wife is in the ordinary course of husbandry or not but presumably it is. At any rate she was not considered an improvement on the farm. *Venable & Bays* v. *Stamper* (1903), — Va. —, 45 S. E. Rep. 738.

The weight of authority supports the decision. As to certainty of contract the decision is supported by *Gates* v. *Gamble*, 53 Mich. 181, 18 N. W. 631; *Mehl* v. *Von Der Wulbecke*, 2 Lans. 267; *Tiernan* v. *Gibney*, 24 Wis. 190; *Gardner* v. *Watson*, 13 Ill, 347; *Christian & Graft Co.* v. *Bienville Water Co.*, 106 Ala. 124, 17 Sou. Rep. 352; *Berry* v. *Woodburn*, 107 Cal. 504, 40 Pac Rep. 802; *Grizzle* v. *Gaddis*, 75 Ga. 350. Contra, *Cochrane* v. *Justice Mining Co.*, 16 Colo. 415, 26 Pac. 780; *Reynolds* v. *O'Niel*, 26 N. J. Eq. 223. As to what improvements constitute part performance sufficient to take an oral contract out of the statute. *Toe* v. *Toe*, 3 Grant Cas. 74; *Peckham* v *Baker*, 8 R. I. 17; *Spalding* v. *Conzleman*, 30 Mo. 177; *Eason* v. *Eason*, 61 Tex. 225. Contra, *Wells* v. *Davis*, 77 Tex. 636, 14 S. W. 237; *Hunt* v. *Hayt*, 10 Colo. 278, 15 Pac. 410.